Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	
Connect America Fund	WC Docket No. 10-90
A National Broadband Plan for Our Future	GN Docket No. 09-51
Establishing Just and Reasonable Rates for Local Exchange Carriers	WC Docket No. 07-135
High-Cost Universal Service Support	WC Docket No. 05-337
Developing an Unified Intercarrier Compensation Regime	CC Docket No. 01-92
Federal-State Joint Board on Universal Service	CC Docket No. 96-45
Lifeline and Link-Up	WC Docket No. 03-109
Universal Service Reform – Mobility Fund	WT Docket No. 10-208

NORTHERN VALLEY COMMUNICATION, LLC'S
RESPONSE TO PETITION FOR RECONSIDERATION AND CLARIFICATION OF
SPRINT NEXTEL CORPORATION

Northern Valley Communications, LLC ("Northern Valley"), by its attorneys and pursuant to Section 1.429(f), hereby respectfully opposes the Petition for Reconsideration ("Petition") filed by Sprint Nextel Corporation ("Sprint") on December 29, 2011 seeking clarification or reconsideration of the Commission's *Order*[1] in the above-captioned proceeding.

[1] *See In the Matter of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92,

As set forth more fully below, Sprint's Petition should be denied on both procedural and substantive grounds.

I. BACKGROUND

On October 27, 2011, the Commission adopted the *Order,* which comprehensively reforms the intercarrier compensation system to promote the availability of affordable broadband services nationwide and to update and modernize the nation's telecommunications systems. Over time, under the Commission's new regime, intercarrier compensation will gradually phase down to a "bill-and-keep" system. In the interim, the Commission took steps to ensure that rates for calls terminating to high volume end users, such as free conferencing and chat services, remain just and reasonable.

The Commission's order recognizes the numerous fights throughout the industry regarding the application of tariffed access charges to calls terminating to these high volume services, the IXC's repeated refusal to pay tariffed access charges, and seeks to address these disputes through the adoption of clear and explicit rules. As the Commission explained in its Notice of Proposed Rulemaking, it sought "to strike the appropriate balance of addressing the policy concerns . . . without imposing unnecessary burdens on LECs . . . ."[2] The Commission, through its new rules, accomplishes such a balance: it rejects repeated invitations to deny Local Exchange Carriers ("LECs") the ability to share revenues with high-volume customers, or to

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96-45, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 2011 WL 5844975 (rel. Nov. 18, 2011) (the "*Order*").

[2] *See In the Matter of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund,* WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, WT Docket No. 10-208, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 4554, ¶ 658 (2011) ("*ICC/USF NPRM*").

strip these LECs of the benefits of the tariffed access charge regime, while reducing and capping the rates that can be charged in these circumstances. While Northern Valley urged the Commission to use a different benchmarking mechanism for establishing the applicable rates, it nevertheless recognizes that the Commission's balance is fully within its discretion and reflects a reasonable resolution of the issues.

The Commission's new rules result from a thoughtful, if not painstaking, process that ensured all interested parties had ample opportunity to provide their input. Indeed, the Commission first considered amending its rules in response to concerns about rising access costs as a result of conference calling services in 2007.[3] Throughout the intervening four years, the Commission received input from a number of interested parties, and through its further notice of proposed rulemaking, sought and obtained yet further input throughout the year on the appropriate course of action.[4]

II. THE PETITION FOR RECONSIDERATION IS PROCEDURALLY IMPROPER AND SHOULD BE DENIED

A. Sprint's Petition for Reconsideration Includes Arguments Previously Presented and Rejected by the Commission

Sprint's Petition repeats an argument that the Commission addressed and rejected in the *Order*. Sprint asks the Commission to reconsider its conclusions about the rate that should apply when a LEC is found to meet the access stimulation definition and urges the Commission to adopt its proposal of $0.0007 per minute.[5] Sprint made this same proposal previously[6] and the

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3 *See Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, Notice of Proposed Rulemaking, 22 FCC Rcd. 17989 (2007).

4 *See ICC/USF NPRM*.

5 Sprint Petition at 8.

Commission expressly rejected it in the *Order*.[7] It is "settled Commission policy that petitions for reconsideration are not to be used for the mere reargument of points previously advanced and rejected."[8] Therefore, Sprint's request to modify the Commission's choice of rates should be summarily dismissed.

B. Sprint's Petition for Reconsideration Raises New Arguments That It Should Have Already Made

Sprint also presents for the first time several new arguments regarding the changes that the Commission should consider to the rules it just adopted.[9] A petition for reconsideration that relies on arguments not previously presented may be granted only if (1) the petition relies on facts or arguments which relate to events which have occurred or circumstances which have *changed* since the last opportunity to present such matters to the Commission; (2) the petition relies on facts or arguments *unknown* to the petitioner until after its last opportunity before the Commission, and it could not through the exercise of ordinary diligence have learned of the facts or arguments in question prior to such opportunity; or (3) the Commission determines that the public interest requires consideration of the new arguments. The Sprint Petition does not argue

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6 *See In the Matter of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, WT Docket No. 10-208, Comments of Sprint Nextel Corporation, at 8, 12-19 (April 1, 2011).

7 *Order*, at ¶ 692.

8 *S&L Teen Hosp. Shuttle*, Order on Reconsideration, 17 FCC Rcd 7899, 7900, ¶ 3 (2002) (citations omitted).

9 Sprint Petition at 9-11.

that it satisfies any of these three criteria. And, in fact, there has been no change in facts or circumstances that would warrant reconsideration.

Sprint urges the Commission to reconsider the *Order* to provide that it will automatically re-examine a CLEC's rate utilizing a TELRIC methodology and requiring a "true-up" if its volumes exceed that of the price cap LEC to which it benchmarks. This request for reconsideration should be dismissed or denied for several reasons. First, Sprint's own records were sufficient to put it on notice that there could be situations in which a CLEC's traffic exceeded the traffic volumes of the price cap LEC to which it benchmarks, and as such, Sprint could have requested the Commission to adopt rules specific to this situation. In any event, Sprint's reconsideration should be denied because Sprint fails to present evidence establishing that this is, in fact, an issue that warrants the Commission's immediate reconsideration, as compared to a hypothetical situation that may arise in the future. Moreover, to the extent that Sprint suggests the Commission should require CLECs to set rates pursuant to a TELRIC methodology, as compared to a benchmarking system, or that it should deny CLECs deemed lawful protection, the Commission has considered and rejected those proposals.[10]

Sprint next asks the Commission to require LECs that opt to forbear from engaging in revenue sharing to be required to conduct a "true-up" when it reverts to billing access at its prior, higher rates. Sprint should have reasonably anticipated a situation in which a LEC terminates its revenue sharing arrangements. Therefore, Sprint already had an opportunity to request that the Commission adopt rules regarding the appropriate access charges to apply when a LEC previously, but no longer, is engaged in revenue sharing. There is no basis to grant

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[10] *See Order* at ¶ 692-94 (declining to address a number of alternative proposals for establishing CLEC rates, including a proposal to allow CLECs to base their rates on costs); *id.* at ¶ 695-97 (addressing deemed lawful protections).

reconsideration of the Commission's rules. Moreover, Sprint's requested clarification is nothing but a repackaged effort to deny a carrier the benefits of "deemed lawful" protection afforded by section 204(a)(3) of the Act.[11] Accordingly, it should be rejected.[12]

Finally, in the *USF/ICC NPRM*, the Commission expressed its intent to require CLECs "to file a revised tariff within 45 days of meeting the relevant trigger, or within 45 days of the effective date of the rule if it currently meets the trigger."[13] And, in the *Order*, the Commission adopted this proposal.[14] Sprint had ample opportunity to address any concerns about the time period for filing tariff modifications and failed to do so. Accordingly, reconsideration is not warranted.

Thus, as demonstrated, each of Sprint's requests for reconsideration is procedurally defective because Sprint's proposal was expressly rejected by the Commission or Sprint had a full opportunity to present its arguments. Accordingly, reconsideration is not warranted.

III. THE ISSUES RAISED BY SPRINT DO NOT JUSTIFY CLARIFICATION

Sprint also asks the Commission to make a number of clarifications to its *Order*. Sprint's Petition, however, fails to demonstrate that any clarification is warranted.[15] Accordingly, Northern Valley urges the Commission to also deny Sprint's requests for clarification.

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11 47 U.S.C. § 204(a)(3).

12 *Order*, ¶ 695-97.

13 *USF/ICC NPRM*, ¶ 665.

14 *Order*, ¶ 691.

15 *See, e.g., In the Matter of Jurisdiction Separations and Referral to the Federal-State Joint Board National Telecommunications Cooperative Assoc.*, 26 FCC Rcd. 9498, 9500, ¶ 7 (2011) (because the rules adopted by the Commission were clear and the party seeking clarification failed to demonstrate why the clarification was necessary, the request was denied).

Sprint first requests that the Commission clarify that nothing in the *Order* overturns either previous Commission rulings or the Communication Act's definition of telecommunications services. Sprint's suggested clarification is unnecessary, as the Courts and the Commission are perfectly capable of applying existing precedent and evaluating the impact, if any, of the Commission's new rules on that precedent. Moreover, Sprint is fully capable of arguing its interpretation of that legal precedent and does not need the Commission to state that which is already, according to Sprint, "self-evident."[16] Indeed, if the Commission made this requested clarification, it would also be incumbent upon the Commission to expressly state the contra-position: its new rules do not invalidate or otherwise disturb tariffs and rates adopted pursuant to its rules, to the extent that a tariff is applicable to the traffic that might now require a LEC to lower its rates. In short, the Commission should decline Sprint's requested clarification because it is unnecessary.

In any event, the Commission should specifically reject Sprint's proposed clarification that "if an entity does not qualify as an end user under the terms of the LEC's access tariff, calls generated by that entity and terminated by the LEC in question do not constitute access services, and access charges do not apply." Sprint Petition at 4. Northern Valley is aware of only one case in which the Commission has adjudicated to finality the question of whether an entity qualifies as an end user under the specific terms of the LEC's access tariff, the *Farmers and Merchants* case.[17] In that case, however, the Commission has concluded that the tariff does not apply based on its fact-specific inquiry, but has yet to complete the damages phase of the

16 Sprint Petition at 5.

17 *Qwest Commc'ns Corp. v. Farmers and Merchants Mutual Tel. Co.*, File No. EB-07-MD-001, Second Order on Reconsideration, 24 FCC Rcd. 14801 (2009), *recon. den'd and clarified*, 25 FCC Rcd. 3422 (2010) , *aff'd Farmers and Merchants Mut. Tel. of Wayland v. Federal Commc'ns Comm'n*, -- F.3d --, 2011 WL 6848437 (D. C. Cir. Dec. 30, 2011).

proceeding. As such, the Commission has not yet evaluated to what extent some charges may apply for the services performed by Farmers.[18]

Sprint also asks the Commission to clarify which price cap LEC rate elements a CLEC engaged in access stimulation may include in its composite benchmarked rate. Northern Valley believes that the requested clarification is unnecessary in light of the Commission's prior guidance on the implementation of the benchmarking approach to CLEC rate setting.[19] In any event, Sprint's proposed clarification that the CLEC may tariff a rate that "reflects only those functions it actually performs," is an imprecise summary of what the Commission has said and thus may cause conflict, rather than creating clarity. Specifically, Sprint's shorthand may be read to conflict with the Commission's previous guidance:

> . . . our benchmark rate for CLEC switched access does not require any particular rate elements or rate structure; for example, it does not dictate whether a CLEC must use flat-rate charges or per-minute charges, so long as the composite rate does not exceed the benchmark. Rather it is based on a per-minute cap for all interstate switched access service charges. In this regard, there are certain basic services that make up interstate switched access service offered by most carriers. Switched access service typically entails: (1) a connection between the caller and the local switch, (2) a connection between the LEC switch and the serving wire center (often referred to as "interoffice transport"), and (3) an entrance facility which connects the serving wire center and the long distance company's point of presence. Using traditional ILEC nomenclature, it appears that most CLECs seek compensation for the same basic elements, however precisely named: (1) common line charges; (2) local switching; and (3) transport. The only

18 25 FCC Rcd. 3422, 3428, ¶ 17.

19 *See In the Matter of Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, CC Docket No. 96-262, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd. 9923, 9946, ¶ 55 (2001); *In the Matter of Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers,* CC Docket No. 96-262, Eighth Report and Order and Fifth Order on Reconsideration, 19 FCC Rcd. 9108, 9118-19, ¶¶ 20-21 (2004).

> requirement is that the aggregate charge for these services, however described in their tariffs, cannot exceed our benchmark. In addition, by permitting CLECs to decide whether to tariff within the safe harbor or to negotiate terms for their services, we allow CLECs additional flexibility in setting their rates and the amount that they receive for their access services.[20]

Thus, rather than clarifying the benchmarking system in a manner that might conflict with prior guidance, and/or resorting to imprecise shorthand, the Commission should simply deny Sprint's request for clarification.

Finally, Sprint asks the Commission to adopt a new rule, in the guise of a clarification, which would require CLECs to base any local transport charge on the price cap LEC's average local transport miles, or the CLEC's own transport miles, whichever is lower. The Commission should decline this request for clarification for two independent reasons. First, the Commission has already made clear that, despite Sprint's request for earlier action, it will not address issues regarding modifications to the transport rate elements until it completes its further rulemaking.[21] Thus, it would be premature to address this issue as part of a petition for clarification. Second, Sprint does not articulate how its proposed new rule would work as a practical matter. Northern Valley is aware of no place where a CLEC can go to determine the "price cap LEC's average local transport miles," and absent this information Sprint's proposal is unworkable. For these reasons, Sprint's request for clarification should be denied.

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[20] Seventh Report and Order, 16 FCC Rcd. 9923, 9946, ¶ 55. Northern Valley, of course, recognizes the further clarification provided by the Commission in the Eighth Report and Order that "the competing incumbent LEC switching rate is the end office switching rate when a competitive LEC originates or terminates calls to end-users and the tandem switching rate when a competitive LEC passes calls between two other carriers." Eighth Report and Order, 19 FCC Rcd. 9108, 9118-19, ¶ 21.

[21] *Order*, ¶ 820.

IV. CONCLUSION

As the Commission stated, it has "balanced the need for [ ] new rules . . . with the costs that may be imposed on LECs . . ." and have concluded that the rules it has adopted are appropriate.[22] Sprint's Petition fails to meet the standards to justify reconsideration of those rules and thus must be rejected. Further, Sprint has not demonstrated that its proposed clarifications are necessary or appropriate and, as such, Northern Valley encourages the Commission to reject them as well.

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Respectfully submitted,

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22 *Order*, ¶ 701.

CERTIFICATE OF SERVICE

I, G. David Carter, hereby certify that on this the 26th day of January, 2012, I caused a copy of the foregoing NORTHERN VALLEY COMMUNICATION, LLC'S RESPONSE TO PETITION FOR RECONSIDERATION AND CLARIFICATION OF SPRINT NEXTEL CORPORATION to be filed electronically in the Commission's Electronic Comment Filing System and a copy to be delivered via courier to:

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